United States Department of Labor
Employees' Compensation Appeals Board

S.H., Appellant	)	
and	)	**Docket No. 14-1737**
	)	**Issued: February 4, 2015**
DEPARTMENT OF THE ARMY, INSTALLATION MANAGEMENT COMMAND, Joint Base Lewis-McChord, WA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On August 4, 2014 appellant timely appealed a May 22, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[2]

[1] 5 U.S.C. §§ 8101-8193 (2006).

[2] On his August 4, 2014 application for review (AB-1), appellant identified the following OWCP case files as the subject of the current appeal: xxxxxx607; xxxxxx906 and xxxxxx993. He also identified April 22, 2014 as the date of OWCP decision being appealed. The latest decision under claim number xxxxxx607 is dated May 22, 2014, and is properly before the Board. Claim number xxxxxx906 has been deleted. Lastly, claim number xxxxxx993 pertains to a June 18, 2013 traumatic injury, which OWCP denied by decision dated January 16, 2014. Appellant filed the current AB-1 more than 180 days after OWCP's January 16, 2014 decision under claim number xxxxxx993. Accordingly, that claim and associated decision does not fall within the Board's jurisdiction. 20 C.F.R. § 501.3(e) (2014).

ISSUE

The issue is whether appellant established that he sustained an abdominal injury in the performance of duty on March 30, 2009.

FACTUAL HISTORY

On April 7, 2009 appellant, then a 39-year-old materials examiner and identifier, filed a traumatic injury claim (Form CA-1), alleging that he sustained for an abdominal injury on March 30, 2009.[3] He described having felt a sharp burning sensation in his lower right stomach and pelvis area. Appellant also noted a visible testicle bulge on the right. He had been carrying antenna mounts weighing 15 to 20 pounds each, and stacking them on pallets. Appellant reported carrying several antenna mounts at a time for a distance of 40 feet.

On March 31, 2009 appellant was seen in the employing establishment's occupational health clinic for complaints of abdominal pain.[4] He reported having injured himself the previous evening while carrying several pieces of equipment each weighing approximately 20 pounds. Visual inspection revealed a normal appearing abdomen. Also, there were no abnormalities with respect to abdominal auscultation, percussion, and palpation. Physical examination revealed no ventral or umbilical hernias. Appellant chose to forgo an inguinal examination, preferring instead to consult with his primary care physician. Pending further evaluation, he was released to return to work in a limited-duty capacity. The final assessment was "abdominal pain" due to "physical trauma at workplace."

An April 1, 2009 duty status report (Form CA-17) noted that appellant was a material mover who had been injured on March 30, 2009. The CA-17 form did not include a history of injury. The reported diagnosis code (ICD-9) was "848.8L," which Brad Goldworm, a physician assistant, identified as chest wall muscle strain. Mr. Goldworm recommended that appellant avoid heavy lifting greater than 10 pounds.

In June 2009, OWCP received a copy of appellant's position description and pay rate information. There was no additional activity on the claim for approximately four years.

On June 21, 2013 appellant filed an occupational disease claim (Form CA-2) with an April 22, 2009 date of injury.[5] He noted that, while on a detail in March 2009, he was carrying heavy components and experienced pain and a burning sensation in the upper abdomen and testicle region. Although appellant subsequently returned to full duty, he reportedly continued to experience a burning sensation in his abdomen. His detail as a materials examiner had been extended indefinitely, and over a four-year period his abdominal condition reportedly worsened

[3] At the time of the alleged injury, appellant was on a temporary detail. His regular position was as an electronic digital computer mechanic.

[4] Appellant was examined by a physician assistant; however, the March 31, 2009 treatment notes were reviewed and countersigned by Dr. Gregory J. Martin, who is Board-certified in occupational, public health and general preventive medicine.

[5] Assigned OWCP File No. xxxxxx705.

to a herniated state. Appellant's claimed conditions included abdominal strain, anterior hernia, and umbilical hernia.[6]

OWCP determined that the June 21, 2013 abdominal claim was a duplicate of the April 7, 2009 CA-1 form.

Appellant visited the employing establishment's occupational health clinic on June 14 and 18, 2013. On both occasions he was seen by Dr. Steven R. Smith, who is Board-certified in preventive/occupational medicine. On June 14, 2013 appellant complained of abdominal pain that had been present since a 2009 injury and had reportedly gotten worse as a result of having been detailed to a more physical job.[7] Dr. Smith noted that appellant apparently pulled an abdominal muscle in 2009 and received treatment for a brief period before stopping. He diagnosed ventral and umbilical abdominal hernias. Dr. Smith suggested that the umbilical hernia should be surgically repaired first. He further noted that the ventral hernia was small and may stabilize if appellant were moved away from heavy lifting and carrying. Dr. Smith explained that individuals who develop ventral hernias are not good candidates for heavy work as they will likely develop other hernias in time. He imposed work restrictions with respect to pushing, pulling, lifting, and carrying. Dr. Smith also advised against operating a forklift and instructed appellant to avoid climbing ladders and stairs, except to get to work. When appellant returned on June 18, 2013, Dr. Smith provided the same diagnoses relative to appellant's abdominal complaints. He noted that appellant had been detailed to a job -- materials examiner and identifier -- that he was unfit to perform. Dr. Smith indicated that appellant's ventral hernia probably started with his original abdominal claim from 2009.

On July 2, 2013 Dr. Gregory D. Gutke examined appellant and diagnosed diastasis of abdominal muscles.[8] Appellant's chief complaints included abdominal bulge. He denied any specific injury or disease, but in the spring of 2009 he noted a gradually widening gap on the midline of his abdomen with burning pain. Eventually, there was a reducible mass protruding through the gap. Dr. Gutke noted that appellant was previously seen on April 1, 2009 for the abdominal mass and was told he had no visible mass. At the time, the health care provider reportedly refused to see appellant for follow up. Dr. Gutke indicated that repetitive strain probably caused a cumulative trauma condition.[9] Appellant also submitted a July 2, 2013 duty status report (Form CA-17) and an attending physician's report (Form CA-20). Both form reports identified March 30, 2009 as the date of injury and listed diastasis (ICD-9 728.84) as the diagnosis due to injury. Dr. Gutke noted the following history of injury: "No specific precipitating event, but noticed painful bulging abdominal mass in spring 2009."

A July 19, 2013 abdominal wall ultrasound revealed 5.5 cm distance between the medial margins of each end of the rectus abdominis (abs) muscles. Appellant also had a computerized tomography (CT) scan of the abdomen and pelvis. The September 7, 2013 CT scan revealed a

[6] He also reported left Achilles tendinitis, right elbow/shoulder tendinitis, and obesity.

[7] Appellant also complained of Achilles tendon swelling and pain, as well as shoulder and elbow pain.

[8] Dr. Gutke is Board-certified in occupational, public health and general preventive medicine.

[9] In addition to diastasis, Dr. Gutke diagnosed left Achilles tendinitis, right elbow strain, and low back strain.

midline fatty umbilical hernia of the anterior abdominal wall. There was also evidence of small bilateral inguinal hernias.

On October 1, 2013 appellant consulted with Dr. Daniel S. Salyer, a Board-certified surgeon, who reviewed the recent CT scan and also examined appellant. Dr. Salyer noted the CT scan revealed bilateral inguinal hernias, a small umbilical hernia, and large diastasis. He noted that the umbilical hernia could be surgically repaired, but appellant weighed in excess of 300 pounds, and thus, was not an optimal candidate for surgical intervention. Dr. Salyer indicated that weight loss would significantly decrease the risk of recurrence and would aid in the repair. He also noted that appellant's very wide diastasis was the result of his obesity, and was not amenable to surgery. Lastly, Dr. Salyer advised that the bilateral inguinal hernias could be surgically repaired, but not simultaneously. Appellant decided against proceeding with surgery at the time.

In a May 22, 2014 decision, OWCP denied appellant's traumatic injury claim. The evidence of record failed to establish that his current abdominal condition was causally related to the March 30, 2009 employment incident.

LEGAL PRECEDENT

A claimant seeking benefits under FECA has the burden of establishing the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence, including that an injury was sustained in the performance of duty as alleged and that any specific condition or disability claimed is causally related to the employment injury.[10]

To determine if an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether "fact of injury" has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.[11] The second component is whether the employment incident caused a personal injury.[12] An employee may establish that an injury occurred in the performance of duty as alleged, but fail to establish that the disability or specific condition for which compensation is being claimed is causally related to the injury.[13]

[10] 20 C.F.R. § 10.115(e), (f) (2012); *see Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[11] *Elaine Pendleton*, 40 ECAB 1143 (1989).

[12] *John J. Carlone*, 41 ECAB 354 (1989). Causal relationship is a medical question that generally requires rationalized medical opinion evidence to resolve the issue. *See Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on whether there is a causal relationship between the diagnosed condition and the implicated employment factor(s) must be based on a complete factual and medical background. *Victor J. Woodhams*, 41 ECAB 345, 352 (1989). Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty, and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and appellant's specific employment factor(s). *Id.*

[13] *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

ANALYSIS

Appellant initially claimed to have sustained an abdominal injury on March 30, 2009 while carrying and stacking antenna mounts weighing approximately 15 to 20 pounds each. He described having felt a sharp burning sensation in his lower right stomach and pelvis area. Appellant also noted a visible testicle bulge on the right. However, when examined on March 31, 2009 for complaints of abdominal pain, visual inspection revealed a normal appearing abdomen, and physical examination revealed no ventral or umbilical hernias.[14] Other than the noted abdominal pain, there was no specific diagnosis provided. Pain is not a diagnosis, and subjective complaints of pain are not sufficient, in and of themselves, to support compensation benefits under FECA.[15]

Mr. Goldworm, a physician assistant, provided an April 1, 2009 duty status report CA-17 form with a diagnosis of chest wall muscle strain (ICD-9 "848.8L"). Although the CA-17 form identified March 30, 2009 as the date of injury, the report did not include a history of injury or a description of clinical findings. Apart from these deficiencies, Mr. Goldworm's diagnosis is of limited probative value. Certain health care providers such as physician assistants, nurse practitioners, physical therapists, and social workers are not considered "physician[s]" as defined under FECA.[16] Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.[17]

Four years later, appellant filed a CA-2 claim form for an abdominal injury dating back to April 22, 2009. He explained that his initial 2009 injury from carrying heavy components had since worsened to a herniated state. The June 21, 2013 claim was for abdominal strain, anterior hernia, and umbilical hernia, which OWCP determined that was a duplicate of appellant's March 30, 2009 traumatic injury claim.[18]

The medical evidence OWCP received in conjunction with the June 2013 CA-2 form claim includes various diagnoses, but the question remains as to whether appellant's current abdominal condition is causally related to the March 30, 2009 employment incident.

First, the July 19 and September 7, 2013 diagnostic studies did not specifically address the etiology of the noted diastasis and/or hernias. Dr. Smith, who initially examined appellant on June 14, 2013, diagnosed ventral and umbilical hernias. He noted that appellant complained of abdominal pain dating back to a 2009 injury, which had worsened as a result of having been

[14] At the time, appellant chose to forgo an inguinal examination.

[15] 20 C.F.R. § 10.501(a)(3).

[16] 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t).

[17] *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

[18] The June 2013 claim also included injuries to appellant's left lower extremity and right upper extremity, which OWCP has not addressed under the instant claim for injury arising on March 30, 2009.

detailed to a more physical job. Dr. Smith further noted that appellant apparently pulled an abdominal muscle in 2009. When appellant returned on June 18, 2013, Dr. Smith again diagnosed ventral and umbilical hernias. He indicated that appellant's ventral hernia probably started with his original abdominal claim from 2009. However, the March 31, 2009 treatment notes reviewed by Dr. Martin clearly indicated "No hernia was discovered" at that time. Also, there was no record of appellant having pulled or strained an abdominal muscle in 2009. Moreover, there is no evidence of bridging symptoms relating appellant's current abdominal complaints to the March 30, 2009 employment incident. In fact, there is no evidence of him having received any medical treatment for abdominal complaints over the more than four-year period spanning April 2009 through June 2013. Dr. Smith's opinion on causal relationship, therefore, is not based on a complete factual and medical background.

Dr. Gutke examined appellant on July 2, 2013 and diagnosed diastasis of abdominal muscles. Appellant reportedly denied any specific injury or disease, but noted having developed a gradually widening gap on the midline of his abdomen with burning pain in the spring of 2009. Eventually, there was a reducible mass protruding through the gap. Dr. Gutke indicated that repetitive strain probably caused a cumulative trauma condition. In addition to his narrative report, Dr. Gutke submitted a July 2, 2013 duty status report (Form CA-17) and an attending physician's report (Form CA-20), which both identified March 30, 2009 as the date of injury and noted "No specific precipitating event...." Despite referencing the March 30, 2009 injury date, he did not attribute appellant's diastasis to carrying and stacking antenna mounts weighing approximately 15 to 20 pounds each. Also, Dr. Gutke's July 2, 2013 form reports tend to contradict his narrative report wherein he stated that "repetitive strain ... caused a cumulative trauma condition...." Accordingly, his reports are insufficient to establish a causal relationship between appellant's current abdominal condition and his March 30, 2009 employment exposure.

Lastly, Dr. Salyer's October 1, 2013 surgery consultation did not address the cause of appellant's bilateral inguinal hernias and small umbilical hernia. With respect to appellant's "very wide diastasis," he attributed the condition to obesity.

The Board finds that the medical evidence of record fails to substantiate appellant's claim of an employment-related abdominal condition arising on March 30, 2009. The initial March 31, 2009 finding of abdominal pain is not, by itself, sufficient to justify acceptance of the claim. Appellant appears to have gone without medical treatment for more than four years. The recent 2013 diagnoses of diastasis and various abdominal hernias were not shown to be causally related to his March 30, 2009 employment exposure. Accordingly, appellant has not met his burden of proof to establish that he sustained an abdominal injury in the performance of duty on March 30, 2009.

CONCLUSION

Appellant failed to meet his burden of proof to establish that he sustained an abdominal injury in the performance of duty on March 30, 2009.

ORDER

IT IS HEREBY ORDERED THAT the May 22, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: February 4, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board